

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ELM 3DS INNOVATIONS, LLC,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., et al.,

Defendants.

C.A. No. 14-cv-1430-LPS

JURY TRIAL DEMANDED

FILED UNDER SEAL

**RESPONSE LETTER TO THE HONORABLE JUDGE BURKE
OBJECTING TO DISCOVERY RELATED TO THE FINANCIAL AFFAIRS OF
GLENN LEEDY'S SURVIVING CHILDREN**

Dated: April 27, 2022

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*Attorneys for Plaintiff Elm 3DS
Innovations, LLC*

Dear Judge Burke,

Plaintiff Elm 3DS Innovations, LLC respectfully requests that the Court deny Samsung's motion to compel. This is a patent case in which Elm accuses Samsung of infringing several patents related to stacked semiconductors. Glenn Leedy is the sole inventor of the asserted patents and the former owner of Elm. Mr. Leedy was integrally involved in initiating this lawsuit but tragically passed away during the long pendency of this case.

Mr. Leedy's surviving heirs, his son Conor and his daughter Genevieve, have no connection to this lawsuit. They have never owned or managed Elm, have never been identified as potential witnesses, and were not involved in their father's inventive work. Still, Samsung has aggressively pursued discovery into their personal and financial information. Samsung has sought and obtained their father's will, an unredacted transcript of testimony their father gave in connection with his divorce from their mother, documents related to the trusts their father established for their benefit, and other personal, financial, and family information.

Samsung's present motion doubles-down on its intrusion into the privacy of Mr. Leedy's heirs by seeking discovery into what they stand to receive from any recovery in this lawsuit. But to do so, Samsung would need

Any marginal relevance of this discovery cannot justify such an intrusion into the personal affairs of Mr. Leedy's heirs or the arrangement of Elm's finances in litigating this case.

I. Background

Elm represents a significant portion of the life's work of Mr. Glenn Leedy. He was a serial inventor for decades in Silicon Valley, focusing on emerging issues in semiconductor manufacture in the 1990s. Elm originally sued three different defendant groups almost a decade ago in 2014. The other two defendant groups have settled; only Samsung remains.

Tragically, Mr. Leedy did not survive long enough to see this case through to the end. Shortly after he filed this lawsuit, Samsung obtained a stay to pursue an *inter partes review*. 7/11/2016 Oral Order Staying Case. While this case was stayed, Mr. Leedy passed away. He left behind an ex-wife and two children. Ownership of the company went into a trust, and Mr. Leedy's colleague and friend Ron Epstein serves as the trustee for his estate and manages the Elm companies' affairs.

II. Elm Has Already Disclosed Anything Remotely Relevant to This Issue

Samsung has everything it could possibly need to understand how Mr. Leedy's estate was structured after his death. Elm produced the documents establishing Mr. Leedy's and his children's trusts, which show how the estate is divided among his children and the disposition of Elm's assets. *See, e.g.*, Ex. A. Samsung has procured Mr. Leedy's divorce settlement and deposition transcripts that address Mr. Leedy's ex-wife's interest in any recovery. D.I. 501 at 3 n.4. Samsung has subpoenaed both Mr. Leedy's and his ex-wife's former divorce attorneys and former consultants for additional financial information. D.I. 450-455. Indeed, the executor of Mr. Leedy's estate has been forced to hire additional outside counsel to review the many documents Samsung has sought from Mr. Leedy's former divorce attorney.

Samsung has everything it needs to argue that not every dollar of recovery will go to Mr. Leedy's children and ex-wife. But still it wants more: an accounting of what Mr. Leedy's heirs will

receive from any recovery in this case. Its stated need for this discovery is weak. This motion is really just an effort to further pry into the Leedy family's personal affairs [REDACTED]

Such an intrusion into an opposing party's litigation costs would be unprecedented and the resulting prejudice would not be proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1). *See generally Resol. Tr. Corp. v. Thornton*, 41 F.3d 1539, 1547 (D.C. Cir. 1994) ("The federal discovery rules generally prohibit a litigant from discovering an opponent's assets until after a judgment against the opponent has been rendered.") (quotation and citation omitted).

III. Additional Details Concerning the Leedy Heirs' Inheritance Are Not Relevant

Samsung has the burden to establish the relevance of the Leedy heirs' inheritance, and they fail to do so. *United Access Techs., LLC v. AT&T Corp.*, C.A. No. 11-338-LPS, 2020 WL 3128269, at *1 (D. Del. June 12, 2020). Mr. Leedy's children could not have less to do with this case. They were never involved in the company's affairs. They have no knowledge of the technology in the patents. They have no involvement in this litigation. They are not on any party's Rule 26 disclosures. Their only relevance is that their father was the sole inventor of the patents in suit who has passed away.

Samsung's stated rationales for the relevance of this discovery are a stretch. Unlike Mr. Epstein, Mr. Leedy's surviving children will not be witnesses at trial or deposition, so their "bias" is irrelevant. In addition, the children's inheritance cannot show that someone else—Mr. Epstein—could somehow be paid additional sums. D.I. 501 at 2-3. Elm has produced documents showing Mr. Epstein's interest in this litigation and has disclosed any payments he's received. Samsung is free to ask further questions about this financial interest in Mr. Epstein's deposition. But it's not necessary to know what Mr. Leedy's surviving children will inherit to understand Mr. Epstein's compensation. Sought discovery is not relevant based on "mere suspicion or speculation." *Micro Motion, Inc. v. Kane Steel Co.*, 894 F.2d 1318, 1326 (Fed. Cir. 1990). Samsung has even less here.

Finally, Samsung says that "Elm wants the jury to make th[e] assumption" that Mr. Leedy's children will receive any damages that the jury awards. Elm has in fact told Samsung the opposite when trying to stipulate around this dispute: Elm offered to stipulate that it will *not* say that the damages award will go to Mr. Leedy's children. Ex. B, 4/6/2022 Email from J. Razick to Elm. But Samsung rejected Elm's proposed stipulation. *Id.*

Elm of course is going to discuss at trial Mr. Leedy's background, his inventions, and the fact that he passed away. In fact, the jury would likely be confused if Elm did not give this context. Elm may also provide some basic biographical information about Mr. Leedy, including that he left behind two children. That legacy humanizes the man who dedicated his life's work to the inventions claimed in the patents. This is precisely the sort of basic biographical information routinely provided by witnesses testifying at trial. And it is the type of information Mr. Leedy would have shared with a jury if he had the opportunity to testify.

But this is a far cry from Samsung's claims that Elm will make an improper emotional appeal to the jury about Mr. Leedy's surviving children. Samsung's arguments rely on a chain of inferences it thinks could inflame the jury into rendering a verdict divorced from the evidence at trial. But Samsung presents no reason to assume that the jury will go beyond the jury instructions and facts at trial to ensure that two strangers who never testified at trial will get a larger inheritance. This concern is even less understandable given Elm's offered stipulation.

IV. Providing This Information Is Not Possible and Is Deeply Intrusive

Elm suspects Samsung's real motivation is to force [REDACTED]

[REDACTED] Samsung has long been focused on this

issue. As its own exhibits to this motion show, Samsung has for years sought detailed financial information on anyone with a “financial stake” in the case, agreements regarding funding of the case, and how a recovery in this case would be distributed to any party. D.I. 501 Ex. 4 at 21; Ex. 7 at 42, 45, 79; Ex. 8, 20. Each time, Elm has refused to provide this information, citing its irrelevance. *Id.* Samsung even moved to compel production of any litigation-funding documents, saying that they were relevant to damages, infringement, standing, trial themes, and witness credibility. D.I. 344. Judge Hall reviewed a sample of these documents *in camera* and agreed with Elm that they were irrelevant or work product. D.I. 372.

Now, Samsung is trying to get the same information through an accounting of the Leedy heirs’ inheritance resulting from this case. [REDACTED]

[REDACTED]

But Samsung’s motion goes even further than that: it wants information on what [REDACTED] D.I. 501 at 2. Elm has settled with two of the three initial defendant groups in this suit. [REDACTED]

[REDACTED] The present motion is just a continuation of Samsung’s campaign to pry open Elm’s finances and personal details of Mr. Leedy’s life for either settlement pressure or harassment.

Litigants frequently seek discovery into a plaintiff’s finances, including information about how the proceeds from a litigation will be distributed, in the context of class action litigation. In a decision granting mandamus relief from providing such discovery, the Tenth Circuit explained that “[o]rdinarily courts do not inquire into the financial responsibility of litigants. We generally eschew the question of whether litigants are rich or poor. Instead, we address ourselves to the merits of the litigation.” *Sanderson v. Winner*, 507 F.2d 477, 479 (10th Cir. 1974). *See also Pinkert v. John J. Olivieri, P.A.*, C.A. No. 99-380-SLR, 2001 WL 641737, at *7 (D. Del. May 24, 2001) (“The Federal Rules of Civil Procedure do not permit pre-trial discovery of a defendant’s finances.”). Samsung presents no reason to deviate from those general practices here.

Finally, Samsung has withdrawn the portion of its motion seeking Mr. Leedy’s will. D.I. 505. Elm responds only to the extent Samsung implies that Elm ignored the Court’s order. As shown in the portion of the transcript that Samsung omitted, the parties’ dispute was over documents regarding the children’s trusts, which post-date Mr. Leedy’s passing and have nothing to do with Mr. Leedy’s will. Ex. C, 7/21/2021 Tr. at 5:12-24. Elm met and conferred with Samsung and was explicit about what it was producing and how that production related to Judge Hall’s order. Ex. D, 8/9/2021 Email from S. Jung to Elm Counsel. And the parties submitted a status to the Court on Elm’s production following the July 2021 order. D.I. 433. No mention was made of Mr. Leedy’s will because it was not at issue. Samsung only first took the position that Mr. Leedy’s will fell within the Court’s July 2021 order when drafting its letter here almost a year later. Ex. E, 4/18/2022 Email from J. Razick to M. Ford.

Respectfully submitted,

/s/ Michael J. Farnan

Michael J. Farnan

cc: Counsel of Record (Via E-Mail)